

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

January 13, 2011

In the Matter of K. J. CHRITZ, Minor.

No. 296956

Midland Circuit Court

Family Division

LC No. 08-003210-NA

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In the Matter of H. C. CHRITZ, Minor.

No. 298392

Midland Circuit Court

Family Division

LC No. 08-003210-NA

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Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals an order terminating her parental rights to K. J. Chritz pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) and an order terminating her parental rights to H. C. Chritz pursuant to MCL 712A.19b(3)(a)(ii), (c)(ii), (g), (i), and (j). We affirm.

To terminate parental rights, a trial court must find that at least one of the statutory grounds under MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). A trial court’s findings of fact in a termination proceeding are reviewed for clear error. MCR 3.977(K); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]” *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004).

I. DOCKET NO. 296956

The issues that led to adjudication with regard to K. J. Chritz included respondent’s lengthy history of substance abuse and her use of THC during her pregnancy. The minor child tested positive for THC when he was born. Respondent was offered substance abuse treatment

and drug screens. Six months after the minor child was brought into care, respondent was convicted of operating while impaired and placed on probation. She violated probation five months later when she tested positive for marijuana, and she served 30 days in jail. She participated in substance abuse treatment regularly for seven months and then quit.

A termination hearing was held, and the trial court denied the petition because the court found that respondent had made sufficient progress in the case service plan. Intensive services called Baby Court were then put in place. Review hearings were held every 45 days, and the trial court emphasized to respondent that the Baby Court services she was receiving were extraordinary and that she needed to participate in the services and exhibit a benefit from them. At first, respondent participated in the services but was not consistent. She had trust issues and blamed others for her problems. She was pregnant with another child and, despite warnings, she continued to smoke cigarettes during the pregnancy. Five months after the trial court denied the first termination petition, respondent stopped participating in services and no longer saw either minor child. Several months later, respondent was again jailed for violating probation and she tested positive for marijuana. In October 2009 and again in December 2009, the caseworker tried to reach respondent because K. J. Chritz was in the hospital, but respondent did not respond to messages left on her cellular telephone. Respondent admitted using marijuana as an escape from the stress in her life even though she knew it was not the right thing to do. We conclude that the trial court did not clearly err in finding clear and convincing evidence that respondent had not addressed the substance abuse that brought the child into care and there was no reasonable likelihood that she would do so in the foreseeable future, MCL 712A.19b(3)(c)(i).

After the minor child had been in care, other issues arose that would have caused the minor child to come into the care of the court, including respondent's lack of employment and income, respondent's inability to provide the child with a stable home, and respondent's inability to appropriately care for the health and well being of K. J. Chritz, who had been diagnosed with epilepsy and cerebral palsy. The intensive services available to respondent could have assisted respondent in addressing these issues. However, she did not take advantage of them and the issues continued to be impediments to respondent's reunification with the minor child. We find that the trial court did not clearly err with respect to MCL 712A.19b(3)(c)(ii).

We also conclude that the trial court did not clearly err with respect to MCL 712A.19b(3)(g) and (j). When K. J. Chritz was born, he tested positive for THC. Respondent did not address this issue, continuing to use marijuana throughout the period the child was in the care of the court. Respondent never maintained steady income and did not have a stable home. Rather than do what was necessary so that her child could get the help needed to address his special needs, respondent was an impediment, failing to consent to an MRI recommended by the child's physician, failing to provide negative drug screens so that she could visit with him and attend his therapy appointments, and failing to respond to calls when he was hospitalized. Respondent never appeared to take responsibility for her own actions and do what was necessary to address the issues, blaming everyone else for her problems. There was clear and convincing evidence that respondent did not provide proper care and custody and would be unable to do so within a reasonable time and that the minor child would be harmed if returned to her care.

With regard to the best interests determination, the trial court did not clearly err in finding that termination was in the best interests of the minor child. The child's need for a stable and safe home, free of substance abuse and in which he was a priority, far outweighed any bond that

existed between respondent and the child. Respondent's actions over the two years that K. J. Chritz was in the care of the court showed that she could not provide the appropriate environment for him to thrive.

We note that respondent argues that "DHS should have moved mountains to help [respondent] help herself." What an unfortunate statement given the fact that this is exactly what happened in this case. K. J. Chritz had been in foster care for two years at the time of the termination hearing, and respondent had been provided numerous services and many chances. A termination hearing was held approximately 14 months after the minor child came into care and the trial court denied the petition and gave respondent additional time and services to address her issues. Respondent was provided with a myriad of services before the first termination petition was filed and even more intensive services through Baby Court after the trial court denied that petition. Respondent's progress addressing her issues was minimal, and in October 2009, she stopped participating in any services and discontinued visitation with K. J. Chritz and his newborn brother. Respondent blamed others rather than take responsibility for herself and her minor children and did not take advantage of all of the assistance available to her.

The trial court had the opportunity to hear from respondent at the termination hearing regarding her parental rights to her older son. In applying the clearly erroneous standard, we recognize the special opportunity the trial court has to assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). After hearing respondent's testimony, the trial court stated:

If there were any doubt – which this Court did not have by the end of that testimony – it was sealed with the testimony of Mother herself. Her testimony can be summarized as narcissistic self pity. Her disdain and disregard for her child was palpable. The tragedy, of course, is that she won't do what is necessary unless everyone carefully places the props for her. That is simply not enough. This is a Child with special needs and a Child who needs to be cared for as a Child and not as a casual experience.

We affirm the trial court order terminating respondent's parental rights to K. J. Chritz.

## II. DOCKET NO. 298392

In the proceedings involving her younger son, respondent was essentially absent from any involvement with the minor child. H. C. Chritz was born in September 2009, and respondent pleaded to the allegations in the petition in late October 2009. She did not visit the child after he was three weeks old, did not engage in any services aimed at assisting her with visitation and parenting skills, and did not participate in the termination hearing. We conclude that the trial court did not clearly err when it found the evidence clear and convincing that respondent abandoned H. C. Chritz for more than 91 days, MCL 712A.19b(3)(a)(ii).

We also conclude that the trial court did not clearly err with respect to MCL 712A.19b(3)(c)(ii). The most significant issue involved respondent's failure to visit with H. C. Chritz from three weeks after his birth to the time of the termination hearing. Similarly, we find that the trial court did not clearly err with respect to MCL 712A.19b(3)(g) and (j). When the child was born, respondent had been afforded the opportunity to participate in and benefit from

intensive services aimed at reunification as part of Baby Court. These services included individual counseling, parenting education sessions, and scheduled parenting time. Respondent was given the opportunity to write her own case service plan as well. Respondent did not avail herself of any of these services and did not address her substance abuse issue.

In addition, we conclude that the trial court did not clearly err when it found the evidence clear and convincing with respect to MCL 712A.19b(3)(i). The trial court took judicial notice of the entire file, including as it related to H. C. Chritz's older brother. It is unquestionable that respondent's parental rights to K. J. Chritz were terminated for serious and chronic neglect. K. J. Chritz tested positive for THC when he was born. Respondent continued her substance abuse throughout the time he was in the care of the court, and all efforts to rehabilitate her were unsuccessful.

With respect to the trial court's best interests determination, we find the trial court did not clearly err. Respondent and H. C. Chritz did not share a bond because respondent only visited him for a short time after he was born. Approximately seven months had passed between the time of his birth and the termination hearing. The minor child needed permanency in a stable and safe home, and respondent was unable to provide him with that. We affirm the trial court order terminating respondent's parental rights to H. C. Chritz.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello